IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3414 OF 1990

Smt.Chimabai Ganpatrao Shitole,
Since deceased through her heir
Smt.Shantabai Sayajirao Gaikwad
through power of attorney holder
Shri Khanderao Anandrao Nimbalkar ...Petitioner

Versus

Shri Nivrutti Mahadeo Sanas,
Since deceased through his heirs
Vitthal Nivrutti Sanas & Ors. ...Respondents

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Mrs.Smeeta Mane i/b Mr.Prafulla Shah

for Petitioner.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 23, 2004.

P.C.

1. This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal at Pune dated March 15, 1990 in MRT/P/III/3/89. By this order, the Tribunal rejected the Application preferred by the

Petitioner for condoning the delay to bring on record heirs of deceased Opponent No.2. From the record, it transpires, as was asserted by the Petitioner in the application, the heirs of deceased opponent No.2 were already brought on record during the pendency of that appeal after the death of opponent No.2 on 31st September 1988. However, due to some clerical error, the order disposing of the appeal being TA No.29/86 did not incorporate the said amended cause title. The case of the Petitioner is that the Revision Application came to be filed before the Tribunal on the basis of same defective cause title and when the mistake was realised, the Application for correction of record was filed. The Court, instead of allowing the same, has proceeded on the assumption that the Revision filed by the Petitioner was against dead person. To my mind, the entire approach of the Tribunal is erroneous and untenable.

2. On the other hand, as mentioned earlier, the record was already amended by bringing the heirs of deceased opponent No.2 on record before the Appellate Court itself. It is not a case whether

the heirs of deceased/Opponent No.2 were attempted to be brought on record for the first time in

Revision Application. The case on hand is one of correction of record and not for bringing on record of the heirs of deceased opponent No.2 for the first time as such.

3. Viewed in this perspective, the Tribunal ought to have allowed the application in the interest of justice instead of rejecting the same on technical reasoning. To my mind, this Petition should succeed. Ordered accordingly.

4. The impugned Judgment and Order is set-aside and instead, the application preferred by the Petitioner is allowed. The Petitioner to carry out necessary amendment in the Revision Application within four weeks from issuance of copy of this order by the Registry of the High Court.

5. Petition disposed of on the above terms. No order as to costs.

A.M.KHANWILKAR, J.